

## REQUEST FOR COUNCIL ACTION

**SUBJECT:** Legal services rendered by the law firm, Snow, Christensen & Martineau

**SUMMARY:** Since terminating the City's relationship with URMMA (the Utah Risk Management Mutual Association), the law firm, Snow, Christensen & Martineau, has rendered legal services to the City, including services in connection with now pending litigation. Ratification of those legal services to the City and execution of a written agreement is requested.

**FISCAL IMPACT:**

The cost of on-going legal services in now pending litigation and other unrelated employee matters.

**STAFF RECOMMENDATION:**


Staff recommends adoption of the attached Resolution.

**MOTION RECOMMENDED:**

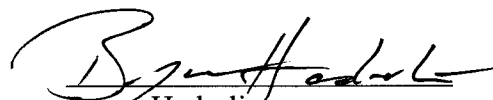
"I move to approve Resolution No. 14-203, ratifying the City's receipt of legal services rendered by Snow, Christensen & Martineau since the City's withdrawal from URMMA, including the City's payment for those legal services, and authorizing the Mayor to execute a written agreement with Snow, Christensen & Martineau for the rendering of legal services defending the City and its representatives in the now pending litigation."

*Roll Call vote required*

**Prepared by:**

  
Jeffrey Robinson  
City Attorney

**Approved by:**

  
Bryce Haderlie  
Interim City Manager

## **DISCUSSION:**

### **City's Participation in and Withdrawal from URMMA:**

URMMA is a risk management association in which the City was a member until July 1, 2011. URMMA was created by interlocal agreement among various municipalities under the Utah Interlocal Cooperation Act, Utah Code Ann. § 11-13-101 et seq. URMMA is defined by the Interlocal Cooperation Act as: "(a) separate from the public agencies that create[d] it; (b) a body politic and corporate; and (c) a political subdivision of the state." While the City was a member, URMMA selected and retained legal counsel to render legal services to the City on matters covered by URMMA. URMMA paid the legal fees and the City reimbursed URMMA for those fee payments. In June 2010, the City gave notice of its withdrawal from URMMA, with the intent of managing all its litigation in-house. The City's withdrawal became finally effective on June 30, 2011.

### **City's Historical Receipt of Legal Services Rendered by Snow, Christensen & Martineau:**

Recently, Dan Harrie of the Salt Lake Tribune, submitted a GRAMA request for "written agreement(s) between [Camille] Johnson and/or the firm of Snow Christensen & Martineau in regards to her engagement by West Jordan City." In response, a search of City records revealed that the City has obtained legal assistance with employee claims, including litigation, from Snow, Christensen & Martineau as early as 1985. It appears that initially those legal services were rendered through URMMA until the City's withdrawal in 2011. Satisfied with Snow, Christensen & Martineau's performance, since withdrawing from URMMA the City has continued to use the relationship developed with the Snow, Christensen & Martineau firm directly to advise and represent the City in employee related matters, one of which is still pending as described below.

In 2012, under the direction of the Salt Lake County District Attorney's Office the State Bureau of Investigation undertook a criminal investigation which subsequently resulted in criminal charges filed by the Salt Lake County District Attorney's Office. An evidentiary hearing was scheduled in the criminal case for July 17, 2013. The Salt Lake County District Attorney's Office requested, and subsequently subpoenaed, City Attorney Jeffrey Robinson and Deputy City Attorney Stuart Williams to attend and give testimony at the evidentiary hearing.

On July 10, 11 & 12, 2013, a week or less before the evidentiary hearing, a Notice of Claim was served on the City, City Attorney Jeffrey Robinson and Deputy City Attorney Stuart Williams. The Notice of Claim was a precursor to the now pending litigation. The Notice of Claim named then City Manager Rick Davis, City Attorney Jeffrey Robinson, Deputy City Attorney Stuart Williams, the then City Council, all City employees and the City itself. The claims asserted were directly related to the then pending criminal case.

Having been expressly named in the Notice of Claim, the City Attorney's office could not represent and defend the City and others named in the Notice. Outside legal counsel was necessary. In addition, concerned that the testimony anticipated to be elicited and given at the July 17, 2013 evidentiary hearing in the criminal action potentially would relate to the issues expressly raised in the Notice of Claim, it created an immediate and serious need to obtain outside legal counsel prior to the July 17, 2013 hearing to protect the interests of the City and all

named individuals. With knowledge of the entire City Council and then City Manager Rick Davis, the City retained Snow, Christensen & Martineau, specifically Camille Johnson, on July 11, 2013 to defend the City and all those named in the Notice of Claim, including the then City Council, City Manager Rick Davis, City Attorney Jeffrey Robinson, and Deputy City Attorney Stuart Williams.

### **The City's Procurement Policies:**

The City's Purchasing Policies, effective when the City retained Snow, Christensen & Martineau, provide:

### **EMERGENCY PROCUREMENT:**

**The existence of an emergency condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods, or existing annual purchase orders.**

**Emergency procurement of supplies, services, or construction shall be made immediately by:**

- **The City Purchasing Agent (whenever possible), or**
- **A Department Director, or**
- **The City Manager, or other designee**

**As much competition as practicable, under the circumstances, should be used in any procurement.**

Furthermore, City Code § 3-1-3D states:

**Government Agency Contracts: Procurement may be approved, without additional competition otherwise required in this chapter, when the city manager determines that another governmental agency has issued a procurement contract based on competitive quotes or bids and either: 1) the city is authorized to purchase under the terms of that contract; or 2) the city offered by a vendor a price equal to or less than the bid price offered through the other agency.**

The City's retention of Snow, Christensen & Martineau in connection with the Notice of Claim and the now pending litigation falls squarely within the City's Emergency Procurement policy. Furthermore, although not directly on point, the City's use of Snow, Christensen & Martineau for advice generally in employee matters and in connection with the now pending litigation is similar to the Code's governmental agency contract provisions. The hourly fee charged by Camille Johnson (\$250) is a significantly discounted rate, \$110 less than Ms. Johnson's standard hourly rate. See Camille Johnson email. Ms. Johnson's hourly rate charged to the City is identical to the hourly fee charged municipalities through URMMA, an entity created under the Utah Interlocal Cooperation Act. The hourly rates reflected in the Snow, Christensen & Martineau agreement demonstrate as much competition as practicable was used under the circumstances and a price equal to that offered through URMMA.

**Fees Historically Paid to Snow, Christensen & Martineau:**

Including the most recent billing statement, the City's records show that the City has paid or incurred payment obligation to Snow, Christensen & Martineau directly a (rounded) total of \$70,500 since 2004. Approximately, \$39,000 of that amount has been incurred in the most recent two years in connection with the Notice of Claim and related litigation discussed above.

**Additional Considerations:**

Snow, Christensen & Martineau is well-respected in the community and has rendered legal services to municipalities for many years. It is among a select group recommended by URMMA to its municipal members. Given Snow, Christensen & Martineau's involvement since July 2013, the Firm's attorneys, Camille Johnson in particular, are intimately familiar with the legal issues and the City's defenses to the Notice of Claim and the pending Complaint. Since the formal Complaint was filed in July 2014, Snow, Christensen & Martineau has prepared and filed an extensive motion to dismiss all claims asserted in the Complaint. Switching legal counsel at this stage would require substantial time and effort to educate new legal counsel at a significant cost to the City, even assuming new counsel were willing to match Snow, Christensen & Martineau's severely discounted hourly rates.

Furthermore, pursuant to Utah Code Ann. § 63G-7-902, each individual named in the Notice of Claim and subsequently named in the now pending Complaint was entitled to request her/his own independent legal counsel, which Council recently approved for Rick Davis. Had each individual done so, the legal fees incurred by the City would have been significantly more than reflected above.

**THE CITY OF WEST JORDAN, UTAH**  
A Municipal Corporation

RESOLUTION NO. 14-203

**A RESOLUTION AUTHORIZING THE EXECUTION BY THE MAYOR  
OF AN AGREEMENT BETWEEN THE CITY OF WEST JORDAN  
AND SNOW, CHRISTENSEN & MARTINEAU P.C.**

Whereas, the City Council has reviewed and considered the attached Agreement between the City and Snow, Christensen & Martineau P.C.; and

Whereas, the City Council has determined the contract to be in the best interest of the City; and

Whereas, the City Council of the City of West Jordan desires that an agreement be executed by the Mayor; and

Whereas, the Mayor is authorized to execute agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. After approval as to legal form by the City Attorney, the Mayor is authorized and directed to sign the Agreement between the City and Snow, Christensen & Martineau P.C., attached hereto.

Section 2. Past work performed by Snow, Christensen & Martineau P.C. after the City's withdrawal from URMMA, and payment for work performed, is hereby ratified.

Section 3. This resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 5<sup>th</sup> day of November, 2014.

CITY OF WEST JORDAN

ATTEST:

By: \_\_\_\_\_  
Mayor Kim V. Rolfe

\_\_\_\_\_  
MELANIE BRIGGS, City Clerk

Voting by the City Council

"AYE"

"NAY"

Chad Nichols

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Chris McConnehey

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Ben Southworth

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Judy Hansen

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Justin Stoker

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Jeff Haaga

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Mayor Kim V. Rolfe

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## Jeffrey Robinson

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**From:** Camille Johnson <cnj@scmlaw.com>  
**Sent:** Tuesday, October 14, 2014 4:44 PM  
**To:** Jeffrey Robinson  
**Subject:** West Jordan City [SCM-iDocs.FID793390]  
**Attachments:** West Jordan City Engagement Letter.PDF

Our engagement letter is attached. As I mentioned on the telephone, my hourly billing rate is presently \$360. The \$250/hour rate you see on the engagement letter is the rate I charge to URMMA. I have made it a practice to pass along to the cities the same discount afforded to the mutual. I have not raised my URMMA rate for several years.

## Camille N. Johnson

Lawyer

## SNOW, CHRISTENSEN & MARTINEAU

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[cnj@scmlaw.com](mailto:cnj@scmlaw.com) | [vCard](#) | [www.scmlaw.com](http://www.scmlaw.com)

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SNOW, CHRISTENSEN & MARTINEAU P.C.

SALT LAKE CITY • ST. GEORGE

Camille N. Johnson  
Lawyer

October 14, 2014

To Contact Writer:  
cnj@scmlaw.com  
(801) 322-9119

Mr. Jeffrey Robinson  
West Jordan City Attorney  
8000 South Redwood Road  
West Jordan, UT 84088

Dear Jeff:

This Firm has had an ongoing relationship with West Jordan City providing employment-related legal services when the City was insured by Utah Risk Management Mutual Association ("URMMA"). Since at least 2010, this Firm has provided employment-related legal services directly to the City. When you contacted me in July 2013 concerning the July 10, 2013 Notice of Claim of Shelley Thomas and Ronald Kunz ("Notice of Claim") we simply ran a conflicts check on the following names and opened an internal file: West Jordan City, Stuart Williams, Jeffrey Robinson, Richard Davis, Melissa Johnson, Chris McConnehey, Judy Hansen, Clive Kilpack, Chad Nichols, Ben Southworth, and Justin Stoker. The conflict check cleared and since July 2013 this Firm has represented the foregoing in connection with the Notice of Claim and related matters on the following terms:

We agree to represent West Jordan City in connection with the personnel investigation. This letter sets forth the terms of our representation.

1. **Fees.** Our representation will be upon an hourly rate fee basis. You will be billed at the hourly rates for each lawyer rendering services on your behalf. Statements will be rendered and will be payable monthly. The applicable rate in each case depends on which of our lawyers renders services on your behalf. The hourly rate charged varies from lawyer to lawyer, depending upon such factors as skill in the particular area of law, experience and reputation. It is anticipated that the following lawyers will be working on your case:

<u>Attorney</u>	<u>Hourly Rate</u>
Camille N. Johnson	\$250.00
Maralyn English	\$250.00
Alison Bent (paralegal)	\$140.00

These hourly rates are subject to periodic review, usually at the end of the calendar year, and may be revised in accordance with revisions applicable generally to hourly rate work.

Mr. Jeffrey Robinson  
West Jordan City  
October 14, 2014  
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The charges for our work include, but are not limited to: court appearances, telephone conferences, office conferences, legal research, depositions, review of file materials and documents, preparation for trials, hearings, conferences, travel time, drafting of pleadings, instruments, correspondence or other documents. Time shall be charged in units of one-tenth hour and any portion of a tenth of an hour shall be charged as a full tenth hour.

2. Costs. You will also be billed for any out-of-pocket costs that we incur on your behalf. These costs include, but are not limited to, travel charges, express mailing charges, long-distance telephone calls, charges for copies, usage charges for computer-based legal research systems, telecopier services, courier service charges and court filing fees.

Our current rates for costs and advances are as follows:

(a) Copying. The charge for all photocopying shall be .20 cents per page, which shall be charged for each copy made, including copies for the court, our files, your information, etc.

(b) Transportation. The charge for transportation expenses shall be billed at the current IRS rate for travel by personal automobile and the actual costs of travel by other means such as, but not limited to, airplane or rented automobile. Lodging, meals and other related expenses shall be charged at actual cost.

(c) Cash Advances. All cash advanced by us for expenses such as, but not limited to, telephone, postage, recording or filing fees, court costs or witness fees, shall be charged at actual cost or as close thereto as possible.

3. Cooperation. We understand that you agree to cooperate fully with and give any necessary assistance to us in connection with the case and that you agree that failure to cooperate with or assist us shall, notwithstanding anything to the contrary, give us the right to withdraw immediately as your counsel.

4. Arbitration. In the event of a dispute concerning this agreement, we each agree to submit that dispute to binding arbitration before the Utah State Bar in accordance with its rules and procedures.

5. Enforcement. In the event arbitration is instituted by us or you to enforce any part of this agreement, the unsuccessful party shall pay all costs and expenses incurred by the prevailing party, including but not limited to, reasonable attorneys' fees and costs.

6. Withdrawal or Dismissal. You shall have the right to dismiss us from your employ at any time. We shall have the right to withdraw as your counsel for your failure

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to comply with the terms of this letter, including without limitation, timely payment of fees and maintenance of the required retainer, and/or in accordance with the Utah Code of Judicial Administration. Upon withdrawal or dismissal, all accrued charges and fees shall be billed to you and paid by you as provided above. After completion of this matter, changes may occur in applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you actually engage us after this matter has been completed to provide additional advice on issues arising from this matter, the firm has no continuing obligation to advise you with respect to future legal developments.

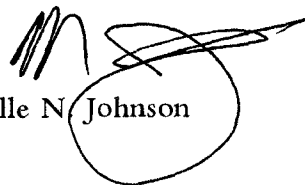
7. No Guaranties. You hereby acknowledge that we have made no guaranties regarding the successful outcome of this matter and all expressions about the outcome or possible damages are simply estimates at this point and no guaranty or representation of any specific outcome.

8. Entire Agreement. This agreement contains the entire agreement of the parties with respect to its subject matter and no modification or waiver of any provision hereof shall be valid unless it be in writing and signed by both parties. The agreement shall be construed in accordance with the laws of the State of Utah.

If the above arrangement is satisfactory to you, and memorializes our continuing relationship, please sign the original of this letter in the space indicated below and return the same to us. A copy of this letter is enclosed for your records.

Very truly yours,

SNOW, CHRISTENSEN & MARTINEAU



Camille N. Johnson

CNJ/cah

ACCEPTED AND AGREED to this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

WEST JORDAN CITY

By \_\_\_\_\_  
~~Jeffrey Robinson~~ Kim V. Rolfe  
~~City Attorney~~ Mayor

2966813

APPROVED AS TO LEGAL FORM  
West Jordan City Attorney

By Daniel Olson Date: 10-28-14